

REMARKS

This is in full and timely Response to the final Official Action of April 11, 2005. Reexamination and reconsideration are respectfully requested.

The suggested correction to the word “sealing” in claim 16 is made to respond favorably to the input of the examiner. Entry is requested.

Reconsideration is requested of the newly-stated rejection of this application and withdrawal of the Action is in order. Only claims 16 to 20 are pending in this application. Each had consistently been allowed in this prosecution. Nothing happened in the Response of January 6, 2005 warranting withdrawal of the allowance and nothing occurred at the behest of the Applicant warranting that change of status. Moreover, each of these claims has not yet been twice rejected so that an appeal is not timely, even if the Applicant sought that remedy. Allowance is suggested, but at the very least a new non-final Action is warranted in that no reasons for the withdrawal of the prior, consistently-stated allowance of claims 16 to 20 were presented.

Reliance on the Richmond patent in support of a rejection is misplaced, in that on or about July 16, 2004, a Declaration Under 37 C.F.R. 1.131 was filed antedating the Richmond reference. A subsequent action discontinued reliance on the Richmond reference, clearly suggesting that the Declaration was sufficient. In a telephone discussion with the Examiner following this action, it was suggested that the original drawing be provided with the dates not excised; however palatable that suggestion might be to overcome a rejection, it is not necessary under Rule 131 practice. Richmond simply is not available as a reference on this record, and reinstatement of Richmond and its application to previously allowed claims is not warranted.

The unavailability of the Richmond reference for consideration as new grounds of rejection on the stated record is a full and sufficient response to the new grounds of rejection stated in this Action. It is further argued, however, that the statement of the rejection is flawed in that factual reasons and/or findings supporting a motivation or suggestion to combine the references to meet the terms of the formerly-allowed method claims are lacking. The examiner only conclusorily alleges the obviousness of the steps, without findings of why one of skill in the

art would have viewed Richmond, Nixon, and/or Bologovsky to combine, modify, and alter the steps. It seems that classis prohibited hindsight is required to made the combination proposed.

It is further noted, however, that at no time was any allegation against the sufficiency of the Declaration for overcoming the Richmond reference made on this record.

Reconsideration and allowance of claims 16 to 20 is respectfully requested.

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Respectfully submitted,

By 

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